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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,508	01/20/2004	Todomu Nishino	09483/0200797-US0	4227

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EXAMINER

MIGGINS, MICHAEL C

ART UNIT	PAPER NUMBER
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1772

MAIL DATE	DELIVERY MODE
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06/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/761,508	NISHINO ET AL.	
	Examiner	Art Unit	
	Michael C. Miggins	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21, 27 and 28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration..
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21, 27-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

REJECTIONS WITHDRAWN

1. All of the rejections either repeated or set forth in the non-final rejection of 7/27/06, pages 2-3, paragraphs 3-5.

REJECTIONS REPEATED

2. There are no rejections repeated.

NEW REJECTIONS

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3-5 and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2000290483 (English abstract and machine translation provided herein).

JP 2000290483 discloses a heat resistant plastic tube (abstract and paragraph [0001]) comprising at least one layer consisting essentially (since the polyester copolymer can be 70% of the total composition, see paragraph [0009]) of a polyester-based elastomer including at least one of a polyester-polyester block copolymer with a hard segment component and a soft segment component and a polyester-polyether

block copolymer with a hard segment component and a soft segment component (abstract and paragraphs [0012] – [0021]), an inner layer comprising a polyester-based elastomer and an outer layer formed on an outside of the inner layer and comprising a crystalline polyester-based resin, an inner layer comprising a crystalline polyester-based resin and outer layer formed on an outside of the inner layer and comprising a polyester-based elastomer (since both layers can be a thermoplastic elastomer polyester-based composition comprising a crystalline polyester, see abstract and claims 1-3), and wherein the at least one layer further comprises at least one of a compound having a functional group for improving adhesion, an antioxidant, a coloring agent, an antistatic agent, a flame retarder, a reinforcing agent, a stabilizer, a forming auxiliary and a conductive material (see paragraph [0060]).

With regard to claims 1 and 27, JP 2000290483 does not specifically disclose applicant's recited ranges for change rate in inner diameter in a dimensional stability performance test or change rate in yield strength in a flexibility retainability performance test, it is noted that these ranges are all related to heat stability. JP 2000290483 does disclose that the tubes have excellent cold and heat resistance and improved flexibility (abstract, paragraph [0001]). Thus one of ordinary skill in the art would have recognized that the recited ranges for change rate in inner diameter in a dimensional stability performance test or change rate in yield strength in a flexibility retainability performance test would be readily determined through routine experimentation depending on the desired end results absent clear and convincing evidence of unexpected results. Further, it would have been obvious to one having ordinary skill in

the art at the time the invention was made to have provided the recited ranges for change rate in inner diameter in a dimensional stability performance test or change rate in yield strength in a flexibility retainability performance test in order to provide improved cold and heat resistance and provide improved flexibility, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges or an optimum value of a result effective variable involves only routine skill in the art (MPEP 2144).

5. Claims 2, 6-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2000290483 (English abstract and machine translation provided herein) in view of Kobayashi et al. (US 4125032) and Rau (US 4510968).

JP 2000290483 does not disclose wherein the tube consists essentially of a single layer of the polyester based elastomer.

Kobayashi discloses wherein the tube consists essentially of a single layer of the polyester based elastomer (column 9, lines 53-63).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided wherein the tube consists essentially of a single layer of the polyester based elastomer in the tube of JP 2000290483 in order to provide ease of construction and lower costs as suggested by Kobayashi.

JP 2000290483 fails to disclose wherein the tube is a fuel feed tube usable within an engine compartment of a motor vehicle, wherein the tube further comprises a bellows portion extending at least part of its length.

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Rau discloses a tube which is a fuel feed tube usable within an engine compartment of a motor vehicle, wherein the tube further comprises a bellows portion extending at least part of its length (column 1, lines 1-6, column 1, lines 50-56). It would have been obvious to employ the materials of JP 2000290483 in a fuel feed tube comprising a bellows portion in order to provide improved heat resistance.

With regards to the surface resistivity recited in claims 16-21, it has been found the finding the workable or optimum range for a result effective variable, absent clear and convincing evidence of an unexpected result, is obvious and well within the level of one of ordinary skill in the art (MPEP 2144). It would have been obvious to one of ordinary skill in the art to have provided the recited surface resistivities in order to dissipate static charge or to provide excellent resistance to electricity as suggested by Kobayashi (column 9, lines 53-63).

ANSWERS TO APPLICANT'S ARGUMENTS

6. Applicant's arguments of 12/20/06 have been carefully considered but are moot in view of the new grounds for rejection above.

Conclusion

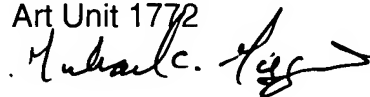
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michael C. Miggins
Primary Examiner
Art Unit 1772



MCM
March 19, 2007